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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 529. 234

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOHN F. BROADHEAD, WILLIAM SCHMOLZ, AND PETER C. SCOTT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED JUNE 5, 1885.

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1 United States circuit court, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JOHN F. BROADHEAD, WM. SCHMOLZ, AND PETER C. SCOTT, DEFENDANTS.

Complaint.

Now comes said plaintiff, by L. G. Hilborn, United States attorney for said district of California, and complains of said defendants, and avers that they are and each of them is indebted to plaintiff in the sum of five thousand ($5,000) dollars, and for cause of action alleges as follows: That heretofore, to wit, on the twenty-first day of February, A. D. one thousand eight hundred and eighty-two, being then the regular term of the district court of the United States for the district of California, held on the first Monday of December, A. D. 1881, at the city and county of San Francisco, in said district of California, the grand jury of the United States, theretofore duly impanneled and sworn before the said dis-
2 trict court, did find and present a certain bill of indictment against the said defendant John F. Broadhead, charging him with the commission of a certain offense against the laws of the United States; that is to say, that the said John F. Broadhead, on the 13th day of January, A. D. 1882, at the city and county of San Francisco, State and district of California, and within the jurisdiction of this court, did then and there unlawfully, willfully, and knowingly falsely make and forge a certain writing, to wit, a check on the assistant treasurer of the United States at San Francisco, State and district aforesaid, for the sum of four thousand six hundred dollars and fifty cents, payable to one H. M. Black or bearer, and purporting to be signed by one R. N. Batchelder, major and quartermaster of the United States Army, for the purpose and with the intent then and thereby to defraud the United States, as appears by the said bill of indictment duly filed by order of said court on the 21st day of February, 1882, and now remaining of record in said court, a copy of which is hereto annexed marked Exhibit A, and made a part hereof.

That on the day and year last aforesaid an order was duly made and entered by the said district court of the United States for the dis-
3 trict of California, for the issuance of a bench warrant to arrest and apprehend the said defendant John F. Broadhead, upon the charge hereinbefore mentioned, and in pursuance of said order a bench warrant was duly issued, and the said John F. Broadhead was arrested by virtue thereof on the 27th day of March, A. D. 1882.

That afterwards, to wit, on the 19th day of April, A. D. 1882, and while the said John F. Broadhead was under arrest and in custody upon the charge hereinbefore mentioned, the said defendants William Schmolz and Peter C. Scott, as bail and sureties of the said John F. Broadhead, and in consideration of his admission to bail, duly appeared in said district court of the United States for the district of California, and thereupon did make, execute, sign, and deliver to the plaintiff herein a certain bail bond or writing obligatory, wherein they jointly and severally agreed, the said John F. Broadhead as principal, and the said Wm. Schmolz and Peter C. Scott as sureties, to owe to and to be held and firmly bound unto

the United States of America, the plaintiff herein, in the full and just sum of five thousand dollars, which said bail bond or writing obligatory was conditioned in substance and effect as follows: That if the said John
4 F. Broadhead should personally appear at the district court of the United States for the district of California, to be held at the court-room of said court, in the city of San Francisco, on the 23d day of May, A. D. 1882, at eleven o'clock in the forenoon of that day, and afterwards, whenever or wherever he might be required to answer the said indictment and all matters and things that might be objected against him whenever the same might be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said court without leave first obtained, and, if convicted, should appear for judgment, and render himself in execution thereof, then the said recognizance should be void; otherwise to remain in full effect and virtue, as will more fully appear by the copy of said bail bond or writing obligatory hereto annexed, marked Exhibit B, and made a part hereof.

That the said bail bond, after being executed and acknowledged by said defendants, was, on the day and year last aforesaid, approved and filed of record in said district court, and thereupon said John F. Broadhead was discharged from custody.

That said bail bond was so executed and delivered by said defendants for the purpose of procuring the release and discharge of said John
5 F. Broadhead from custody, and upon the execution and delivery, and by reason thereof, he, the said John F. Broadhead, was released from custody.

That on the 29th day of January, 1883, the said John F. Broadhead was called upon in said district court of the United States for the district of California for arraignment, and the said John F. Broadhead thereupon appeared in person in said court with his counsel, and after waiving the reading of the indictment aforesaid and upon being arraigned, then and there pleaded not guilty thereto.

That afterwards, on the 23rd day of April, A. D. 1883, the defendant John F. Broadhead was by the plaintiff herein served with a notice in writing whereby he was notified that the cause pending against him in said district court would be brought on for trial on the 17th day of July A. D. 1883. That service of a copy of said notice of such trial was thereupon admitted by the attorney for the said defendant John F. Broadhead, and the original notice thereof with the admission of such service was duly filed in said district court on the 24th day of April, 1883.

That at the April term A. D. 1883, of said district court of the United States for the district of California, to wit, on the 17th day of
6 July, A. D. 1883, the said John F. Broadhead was duly called upon in said district court for trial, and the said John F. Broadhead did, without sufficient excuse therefor, neglect to appear for such trial at said time and place under and upon said indictment.

That said defendant John F. Broadhead was duly called by said district court to appear for trial at said court on said last-named day, but wholly failed and neglected so to do, and wholly failed to hold himself amenable to the orders and process of said district court as in said bail bond specified, but on the contrary made default therein; whereby and by reason whereof said bail bond became forfeited. That thereupon, on the said 17th day of

July, A. D. 1883, the said district court made and entered an order forfeiting and estreating the said bail bond or writing obligatory.

Whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendants and each of them the said sum of five thousand dollars hereinbefore mentioned.

Nevertheless, the said defendants (although requested so to do) have not paid nor hath either of them paid the said sum of five thousand dollars or any part thereof to the said plaintiff, but have hitherto wholly refused and still do refuse and neglect to pay the same or any part thereof.

Wherefore plaintiff demands judgment against said defendants, and each of them, for the sum of five thousand dollars, with interest and costs of suit.

S. G. HILBORN,
United States Attorney.

EXHIBIT A.

United States of America, district court of the United States for the district of California.

At a stated term of the said court, begun and holden at the city and county of San Francisco, within and for the district of California, on the first Monday of December, in the year of our Lord one thousand eight hundred and eighty-one.

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that John F. Broadhead, late of the district of California, heretofore, to wit, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and eighty-two, at the city and county of San Francisco, State and district of California, and within the jurisdiction of this court, then and there being, did then and there unlawfully, willfully, and knowingly, with force and arms, feloniously falsely make and forge a certain writing, to wit, a check on the assistant treasurer of the United States at San Francisco, State and district aforesaid, purporting to be signed by R. N. Batchelder, major and quartermaster United States Army, the same being in words and figures as follows:

WAR.

QUARTERMASTER'S.
DEPOT QUARTERMASTER'S OFFICE,
San Francisco, Jan'y 13, 1882.

No. (33690)

[1 B. Assistant treasurer of the U. S., San Francisco, Cal.]

Pay to H. M. Black or bearer four thousand six hundred $\frac{50}{100}$ dollars.
$4,600.50. R. N. BATCHELDER,
Major & Quartermaster, U. S. A.

[Stanton.]

State object for which drawn: Wagons & tools.

Engraved & printed at the Bureau Engraving & Printing.

for the purpose and with the intent then and there and thereby to defraud the United States.

Against the peace and dignity of the United States of America and

contrary to the form of the statute of the said United States of America in such case made and provided.

PHILIP TEARE,
United States Attorney.

10 Names of witnesses examined before the said grand jury on finding the foregoing indictment: R. N. Batchelder, Frank Jones, Francis G. Bornemann.

(Endorsed:) A true bill. J. S. Doe, foreman. Presented and filed in open court this 21st day of February, A. D. 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

11 EXHIBIT B.

UNITED STATES OF AMERICA,
District of California, ss:

Be it remembered that on this 19th day of April, in the year of our Lord one thousand eight hundred and eighty-two, before me, Southard Hoffman, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared John F. Broadhead as principal, and William Schmolz and Peter C. Scott as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of five thousand ($5,000.00) dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States. The condition of the above recognizance is such that, whereas an indictment has been found by the grand jury of the United States for the district of California, and filed on the 21st day of February, A. D. 1882, in the district court of the United States for said district of California, charging the said John F. Broadhead with the crime of feloniously, &c., making and forging a certain check on the ass't treasurer U. S. at San Francisco, Cal., purport-

12 ing to be signed by R. N. Batchelder, major and quartermaster of the U. S. Army, committed on or about the 13th day of January, A. D. 1882, to wit, at the district aforesaid, contrary to the form of the statute of the United States in such case made and provided;

And whereas the said John F. Broadhead has been required to give recognizance, with sureties, in the sum of five thousand ($5,000.00) dollars for his appearance:

Now, therefore, if the said John F. Broadhead shall personally appear at the district court of the United States for the district of California, to be holden at the court room of said court, in the city of San Francisco, on the 23rd day of May, A. D. 1882, at eleven o'clock in the forenoon of that day, and afterwards whenever and wherever he may be required to answer the said indictment and all matters and things that may be objected against him, whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said court without leave first obtained, and if con-

victed shall appear for judgment and render himself in execution thereof, then this recognizance shall be void, otherwise to remain in full effect and virtue.

J. F. BROADHEAD. [SEAL.]
WM. SCHMOLZ. [SEAL.]
PETER C. SCOTT. [SEAL.]

Acknowledged before me, the day and year first above written.
SOUTHARD HOFFMAN,
Comm'r U. S. Circuit Court, District of California,
to take acknowledgments of bail, &c.

13 DISTRICT OF CALIFORNIA, *ss:*

William Schmolz and Peter C. Scott, being duly sworn, each for himself deposes and says that he is a householder in said district, and is worth the sum of five thousand ($5,000.00) dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

WM. SCHMOLZ.
PETER C. SCOTT.

Subscribed and sworn to before me this 19th day of April, A. D. 1882.
SOUTHARD HOFFMAN,
Comm'r U. S. Circuit Court, District of California,
to take acknowledgments of bail, etc.

I hereby approve the form of and the sufficiency of the sureties on the within bond.

PHILIP TEARE,
United States Attorney.

(Endorsed:) Filed this 20th day of April, A. D. 1884. Southard Hoffman, clerk U. S. district court, district of California.
(Endorsed:) Filed August 31, 1883. L. S. B. Sawyer, clerk.

14 United States of America, circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF America, plaintiff, *vs.* JOHN F. BROADHEAD ET al., defendants. } Action brought in the said circuit court and the complaint filed in the office of the clerk of said circuit court in the city and county of San Francisco.

Summons.

The President of the United States of America, greeting:

To John F. Broadhead, William Schmolz, and Peter C. Scott:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the circuit court of the United States, ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer to the complaint filed therein (a certified copy of which accompanies this summons) in the office of the clerk of said court in the city

and county of San Francisco within ten days after the service on you of this summons if served in this county, or if served out of this
15 county, then within thirty days, or judgment by default will be taken against you.

The said action is brought to obtain a judgment against you for the sum of five thousand dollars, together with interest thereon and costs of action, alleged to be due plaintiff by reason of the breach of a certain bond executed by defendants to plaintiff and conditioned for the appearance of said John F. Broadhead before the district court of the United States for the district of California, whenever required, to answer an indictment pending against him therein, and if you fail to appear and plead, answer, or demur as herein required your default will be entered and the said plaintiff will take judgment against you for said sum of $5,000, together with interest thereon as aforesaid and the costs of this action.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31st day of August, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the 108th.

[SEAL.] L. S. B. SAWYER,
Clerk.

16 (Endorsed:) United States marshal's office. District of California. I hereby certify that I received the within writ on the 7th day of September, 1883, and personally served the same on the 12th day of September, 1883, by delivering to and leaving with William Schmolz, and on the 28th day of September, 1883, by delivering to and leaving with Peter C. Scott, said defendants named therein, personally, at the city & county of San Francisco, in said district, a certified copy thereof, together with a copy of the complaint, certified to by L. S. B. Sawyer, clerk circuit court, attached thereto. I furthermore certify that after diligent search I am unable to find John F. Broadhead, said defendant, in said district. M. M. Drew, U. S. marshal. San Francisco, Nov. 1st, 1883. By C. H. Peterson, deputy.

(Endorsed:) Filed Nov. 1, 1883. L. S. B. Sawyer, clerk.

17 United States circuit court, ninth district, State of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JOHN F. BROADHEAD, WILLIAM SCHMOLZ, AND PETER C. SCOTT, DEFENDANTS. } 3127.

Answer.

I.

And now come the said defendants William Schmolz and Peter C. Scott, impleaded with the said defendant John F. Broadhead, in the above entitled action, by McClure and Dwinelle, their attorneys, and answer the complaint of the said plaintiff in the above entitled action, and deny that they or each or either of them is or are indebted to the said plaintiff in the sum of five thousand (5,000) dollars, or that they or each or either of them is or are indebted to the said plaintiff in any sum whatever.

II.

And as a further, other, and separate answer to said complaint in this action, the said William Schmolz and Peter C. Scott, impleaded herein with the said defendant John F. Broadhead, over that the said
18 plaintiff ought not to have or maintain the above-entitled action against them, the said defendants William Schomlz and Peter C. Scott or against either of them, because they each say and aver that after the finding by the grand jury of the indictment in said complaint mentioned, and after the issuing of the original bench warrant and the arrest and arraignment of the said defendant John F. Broadhead thereunder, and his pleading "not guilty" thereto, and after the making, signing, and acknowledging by them and the said defendant John F. Broadhead, of the bail bond or writing obligatory in said complaint mentioned and set forth, and the approval and filing of record thereof on the 19th day of April, A. D. 1882, and after the release and discharge of the said defendant John F. Broadhead, and long after the happening of all the acts and doings in said complaint severally set forth, prior to the date last aforesaid, to wit, on the 29th day of January, A. D. 1883, at a session of the said United States district court for the State of California, held at the court room thereof on that day, in the city and county of San Francisco, and in open court the said defendant John F. Broadhead was, by order of the court last named, called to answer said indictment and failed to answer, appear, or respond thereto, and the said bail bond or
19 writing obligatory, and the said defendant John F. Broadhead's bail was, by the said United States district court for the State of California, by its order, forfeited, and declared to be forfeited; and afterwards, on the day and year last aforesaid, an order was made by the United States district court for the State of California, in open court, than an alias bench warrant issue for the arrest of the said defendant John F. Broadhead forthwith; and immediately thereafter, and on the day and year last aforesaid, and in pursuance of said last-named order, an alias bench warrant was issued by and out of the said United States district court for the State of California, and out of the action of the said plaintiff against the said defendant John F. Broadhead, predicated upon said indictment then pending therein, addressed to the United States marshal for the State of California, commanding him to forthwith arrest the said defendant John F. Broadhead and bring him before said court; and afterwards, and on the day and year last aforesaid, under, by virtue, and in pursuance of the command of the said alias bench warrant, the said United States marshal arrested the said defendant John F. Broadhead and brought him before and into the custody of the said United States district court for the
20 State of California, and surrendered him in open court thereto; and afterwards, on the day and year last aforesaid, to wit, on the said 29th day of January, A. D. 1883, the said United States district court for the State of California, without the knowledge or consent of the said defendants William Schmoltz and Peter C. Scott, or the knowledge or consent of either of them, the said defendant John F. Broadhead was discharged from custody, arrest, and imprisonment.

Therefore the said defendants pray to be hence dismissed without costs.

III.

And as a further, other, and separate answer to said complaint in this action, the said William Schmolz and Peter C. Scott, impleaded herein with the said defendant John F. Broadhead, aver that the said plaintiff ought not to have or maintain the above-entitled action against them, the said defendant William Schmolz and Peter C. Scott, or against either of them.

Because they each say and aver that after the finding by the grand jury of the indictment in said complaint mentioned, and after the issuing of the original bench warrant, and the arrest and arraignment of the said defendant John F. Broadhead thereunder, and his pleading
21 "not guilty" thereto, and after the making, signing, and acknowledging by them and the said defendant John F. Broadhead of the bail bond or writing obligatory in said complaint mentioned and set forth, and the approval and filing of record thereof on the 19th day of April, A. D. 1882, and after the release and discharge of the said defendant John F. Broadhead, and long after the happening of all the acts and doings in said complaint severally set forth, prior to the date last aforesaid, to wit, on the 29th day of January, A. D. 1883, at a session of the said United States district court for the State of California, held at the court-room thereof on that day in the city and county of San Francisco, and in open court, the said defendant John F. Broadhead was, by order of the court last named, called to answer said indictment and failed to answer, appear, or respond thereto, and the said bail bond or writing obligatory, and the said defendant John F. Broadhead's bail was by the said United States district court for the State of California by its order forfeited and declared to be forfeited; and afterwards, on the day and year last aforesaid an order was made by the said United States district court for the State of California, in open court, that an alias bench warrant issue for the arrest of the said defendant John F. Broadhead
22 forthwith; and immediately thereafter, and on the day and year last aforesaid, and in pursuance of said last-named order and alias bench warrant was issued by and out of the said United States district court for the State of California, and out of the action of the said plaintiff against the said defendant John F. Broadhead, predicated upon said indictment then pending therein, addressed to the United States marshal for the State of California, commanding him to forthwith arrest the said defendant John F. Broadhead, and bring him before said court; and afterwards, and on the day and year last aforesaid, under, by virtue, and in pursuance of the said alias bench warrant, the said United States marshal arrested the said defendant John F. Broadhead, and brought him before and into custody of the said United States district court for the State of California, and surrendered him in open court thereto; and afterwards, and on the day and year last aforesaid, to wit, on the said 29th day of January, A. D. 1883, the said United States district court for the State of California, without the knowledge or consent of the said defendants William Schmolz and Peter C. Scott, or the knowledge or consent of either of them, the said defendant John F. Broadhead was discharged from custody, arrest,
23 and imprisonment, and thereby, without the privity, procurement, knowledge, or consent of the said defendants William Schmolz and

Peter C. Scott, or the privity, procurement, knowledge, or consent of either of them, the said defendant John F. Broadhead then and there escaped from imprisonment, from the custody of the United States marshal, said court, said plaintiff, and from the custody of the law.

Therefore said defendants pray to be hence dismissed with costs.

McCLURE & DWINELLE,
Attorneys for Defendants.
WILLIAM SCHMOLZ & PETER C. SCOTT,
526 *Montgomery st., San Francisco, Cal'a.*

UNITED STATES OF AMERICA,
District of California, ss:

William Schmolz, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has heard read the foregoing answer, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

WM. SCHMOLZ.

24 Subscribed and sworn to before me this 11' day of January, A. D. 1884.

F. D. MONCTON,
Commissioner of U. S. Circuit Court,
District of California.

(Endorsed:) Due service of the within answer is hereby admitted this 11th day of January, 1884. Carroll Cook, ass't U. S. att'y. Filed January 11, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

25 At a stated term, to wit, the term, A. D. 1884, of the circuit court o' the United States of America of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Friday, the 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable Lorenzo Sawyer, circuit judge.

UNITED STATES OF AMERICA
vs.
JOHN F. BROADHEAD ET AL. } No. 3127.

Stipulation.

It is hereby stipulated and agreed that a jury trial in the above-entitled case is hereby waived.

S. G. HILBORN,
U. S. Attorney, Att'y for Pl'ff.
McCLURE AND DWINELLE,
Attorneys for Defendants.

(Endorsed:) Filed Sep'r 5, 1884. L. S. B. Sawyer, clerk.

26 At a stated term, to wit, the July term, A. D. 1884, of the circuit court of the United States of America of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Friday, the 12th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES OF AMERICA
vs.
F. BROADHEAD & ET AL. } No. 3127.

Findings.

This cause having come on regularly for trial on the 5th day of September, A. D. 1884, before the court sitting without a jury, a trial by jury having been duly waived, Carroll Cook, esq., assistant U. S. attorney, appearing on behalf of the United States, and S. H. Dwinelle, esq., appearing on behalf of the defendants, and the evidence, oral and documentary, having been introduced and closed, and the cause having been submitted to the court for consideration and decision, the court being sufficiently advised, now finds the issues of fact in favor of the defendants, and as a conclusion of law that the defendants are entitled to judgment.

27 Let judgment be entered accordingly.

LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed September 12, 1884. L. S. B. Sawyer, clerk.

28 United States of America, circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA
vs.
J. F. BROADHEAD, WM. SCHMOLZ, AND PETER C. Scott. } No. 3127.

Judgment.

This cause having come on regularly for trial on the 5th day of September, 1884, being a day in the July, 1884, term of said court, before the court sitting without a jury, a trial by jury having been waived by written stipulation of counsel for the respective parties hereto, duly filed with the clerk of this court, Carroll Cook, esq., assistant U. S. attorney, appearing on behalf of the United States, plaintiff, and S. H. Dwinelle, esq., on behalf of the defendants, and documentary evidence having been introduced on the part of the United States, and the evidence being closed, the cause, after arguments of counsel having been submitted to the court for consideration and decision, and the court having filed its findings in writing, and ordered that judgment be entered herein in accordance with said findings.

29 Now, therefore, by virtue of the law and the findings aforesaid it is considered by the court that the United States, plaintiff, take nothing of this action, and that the defendant go hereof without day.

Judgment entered this 12th day of September, 1884.

L. S. B. SAWYER,
Clerk.

(Endorsed:) I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause. Attest my hand and the seal of said circuit court this 12th day of September, A. D. 1884. [Seal.] L. S. B. Sawyer, clerk. Filed September 12, 1884. L. S. B. Sawyer, clerk.

30 United States of America, circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA
vs.
F. BROADHEAD ET AL.

Certificate to judgment roll.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment roll in the therein entitled action.

Witness my hand and the seal of said circuit court, this 12th day of September, A. D. 1884.

L. S. B. SAWYER,
Clerk,
By F. D. MONCTON,
Deputy Clerk.

(Endorsed:) Judgment roll. Filed September 12, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

31 In the circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF and plaintiff in error,
vs.
JOHN F. BROADHEAD, WILLIAM SCHMOLZ, and Peter C. Scott, defendants and defendants in error.

I, L. S. B. Sawyer, clerk of said court, do hereby certify that the foregoing thirty written pages, numbered from one to thirty, inclusive, are a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court, at San Francisco, California, this 18th day of May, A. D. 1885.

[SEAL.] L. S. B. SAWYER,
Clerk.

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, ninth judicial circuit, in and for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiff and plaintiff in error, and John F. Broadhead, William Schmolz, and Peter C. Scott, defendants and defendants in error, a manifest error hath happened, to the great damage of the said plaintiff and plaintiff in error, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

[SEAL.] L. S. B. SAWYER,
Clerk of U. S. Circuit Court, District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge.

33 *The answer of the judges of the circuit court of the United States for the district of California.*

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States of America, within mentioned, at the day and place within, contained in a certain schedule to this writ annexed, as within we are commanded.

By the court.

[SEAL.] L. S. B. SAWYER,
Clerk.

(Indorsed:) United States Supreme Court. United States of America, pl'ff in error, vs. John F. Broadhead, et. al., def'ts in error. Writ of error. Filed April 22d, 1885. L. S. B. Sawyer, clerk U. S. circuit court, district of California.

34 UNITED STATES MARSHAL'S OFFICE,
District of California:

I hereby certify that I received the annexed citation on the 22d day of April, 1885, and personally served the same on the 23d day of April, 1885, by delivering to and leaving with David McClure, attorney for said defendants named therein, personally, at the city and county of San Francisco in said district, a certified copy thereof.

M. M. DREW,
U. S. Marshal,
By C. H. PETERSON,
Deputy.

San Francisco, April 24th, 1885.

35 UNITED STATES OF AMERICA, *ss:*

To John F. Broadhead, William Schmolz, and Peter C. Scott, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1885, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, ninth circuit, district of California, wherein the United States of America is plaintiff and plaintiff in error and you are defendants and defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, judge of the circuit court of the United States, ninth circuit, district of California, this 22d day of April, A. D. 1885, and of the Independence of the United States the one hundred and ninth.

[SEAL.] LORENZO SAWYER,
U. S. Circuit Judge.

36 (Indorsed:) In the Supreme Court of the United States. The United States of America, pl'ff in error, vs. John F. Broadhead, et. al., deft's in error. Citation. Filed April 25, 1885. L. S. B. Sawyer, clerk U. S. circuit court, district of Cala.

(Indorsement on cover:) No. 529. The United States, plaintiff in error, vs. John F. Broadhead, William Schmolz, and Peter C. Scott. California C. C. U. S. Filed June 5, 1885.

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Office Supreme Court U. S.
FILED.
APR 16 1888
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, PLAINTIFF IN error,
vs.
JOHN F. BROADHEAD, WILLIAM Schmolz, and Peter C. Scott, defendants.
} No. 234.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

BRIEF FOR THE PLAINTIFF IN ERROR.

WM. A. MAURY,
Assistant Attorney-General.

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vs.
JOHN F. BROADHEAD, WILLIAM Schmolz, and Peter C. Scott.
} No. 234.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

BRIEF FOR THE PLAINTIFF IN ERROR.

This is an action on a bail bond in the penalty of $5,000, as required by the penal code of California (§ 1306).

The complaint alleges that the defendant, John F. Broadhead, was duly indicted by the grand

jury of the United States district court for the district of California on the 21st February, 1882, for forging a certain check on the assistant treasurer of the United States at San Francisco;

That on the day last mentioned a bench-warrant was issued, and that on the 27th March, 1882, the said Broadhead was arrested, and while under arrest was, to wit, on the 19th April, 1882, discharged from custody on the execution and delivery of the bond in suit;

That the defendant, Broadhead, pleaded not guilty to the indictment;

That on the 23d April, 1883, Broadhead was notified to appear and stand his trial on the 17th July, 1883, but that he did not appear, although duly called by order of said court; wherefore the said bond was declared forfeited and estreated, and an action did accrue to the United States to demand and have the amount of said bond with the interest thereon (pp. 1–3).

Process was served on the defendants, Schmolz and Scott, who answered as follows:

ANSWER.

They deny any indebtment in the amount of the bond or any other sum.

The next defense is that Broadhead was called to answer the indictment on the 29th January, 1883, but failed to appear, and that thereupon his bail was forfeited by order of court; and he was afterwards brought in on a bench-warrant, and while in the custody of the marshal was discharged from custody without the knowledge or consent of the defendants, and that, as a consequence, the defendants were exonerated.

The next defense arises upon the same allegations, with the additional allegation that the defendant, Broadhead, *escaped* from the custody of the marshal (pp. 6–9).

By stipulation the trial by jury was waived (p. 9).

FINDINGS AND JUDGMENT.

The court found "the issues of fact in favor of the defendants" (p. 10), and entered judgment accordingly (pp. 10, 11).